

June 20, 2017

EDWARD J. EMMONS, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

Signed and Filed: June 19, 2017



Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re) Bankruptcy Case
BLUE EARTH, INC.,) No. 16-30296 DM
) Chapter 11
Debtor.)
_____)

**MEMORANDUM DECISION REGARDING TERESA JEAN MOORE'S REQUEST FOR
RECONSIDERATION OF ORDER DISALLOWING CLAIM NO. 105**

I. Procedural Background

On April 20, 2017, this court issued a memorandum decision [Dkt. No. 437] explaining why it would sustain the objection of Blue Earth, Inc. ("Debtor") to Claim No. 105 filed by Robert C. Florek ("Florek") and assigned to Teresa J. Moore ("Moore"). On April 28, 2007, the court entered an order [Dkt. No. 447] disallowing the claim ("Order") for the reasons set forth in the memorandum decision.

On May 2, 2017, Moore filed an "Objection to the Order of the Court of the April 21, 2017 and Reply to the Opposition of the Debtor of the April 18, 2017 [sic]." [Dkt. No. 449]. By an order dated May 4, 2017, the court indicated that it would treat the objection and reply as a motion for reconsideration of the Order

1 and directed Debtor to file a response within 14 days. Debtor
2 filed its response opposing reconsideration on May 11, 2017, at
3 which time the matter stood submitted.

4 II. Standards for Reconsideration of Claims

5 Bankruptcy Code section 502(j) provides that a claim that has
6 been allowed or disallowed may be reconsidered for cause, and on
7 reconsideration a claim may be allowed or disallowed according to
8 the equities of the case. 11 U.S.C. § 502(j).¹ In turn,
9 Bankruptcy Rule 3008 provides that a "party in interest may move
10 for reconsideration of an order allowing or disallowing a claim
11 against the estate. The court after a hearing on notice shall
12 enter an appropriate order." Fed. R. Bankr. P. 3008. Because
13 Moore objected to the form of the Order within 14 days of its
14 entry, the court will apply the standards for reconsideration set
15 forth in Bankruptcy Rule 9023, incorporating Federal Rule of Civil
16 Procedure 59. *In re Wylie*, 349 B.R. 204, 209 (9th Cir. BAP 2006).

17 The Ninth Circuit has described the circumstances justifying
18 relief under Rule 59: (1) where the motion is necessary to correct
19 manifest errors of law or fact upon which the judgment rests; (2)
20 where the motion is necessary to present newly discovered or
21 previously unavailable evidence; (3) where the motion is necessary
22 to prevent manifest injustice; and (4) where the amendment is
23 justified by an intervening change in controlling law. *Allstate*
24 *Insurance Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011). As
25 discussed below, Moore has not demonstrated the existence of any

26
27 ¹Unless otherwise indicated, all chapter, section and rule
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

1 of these circumstances.

2 III. Discussion

3 Moore asserts several grounds for reconsideration. Among
4 those, she contends that Debtor improperly objected to the claim
5 by including it in an omnibus objection to multiple claims. The
6 court rejects this argument for three reasons. First, Rule
7 3007(d)(7) specifically allows objectors to use the omnibus
8 procedures when they contend that the alleged obligation
9 constitutes an interest and not a claim. That was the precise
10 basis of Debtor's objection. Second, both Florek and Moore were
11 given ample opportunity to address and brief the substantive
12 issues, as reflected by the multiple filings by them. Thus any
13 concern about the lack of notice that may result from an omnibus
14 objection is unwarranted here. Third, neither Florek nor Moore
15 raised this objection until after full briefing and entry of the
16 Order.

17 Moore also contends that the court should not have issued its
18 ruling without permitting her further opportunity to conduct
19 discovery and address disputed facts. As the court rendered its
20 decision as a matter of law and any disputed facts are immaterial
21 to the court's determination, further discovery is unwarranted.
22 In any event, Debtor objected to Claim No. 105 in October 2016,
23 and the court deferred ruling on the objection on several
24 occasions so that Florek or Moore could respond further. No
25 further delays are justified.

26 Moore further asserts that the court erred in stating that
27 Claim No. 105 was based on the purchase of stock in another
28 entity; rather, the claim is based on the purchase of a unit in a

1 limited partnership. While the court erred in labeling the
2 transaction as a purchase of "stock" instead of a "unit," that
3 error is harmless and immaterial. Moore concedes that Florek
4 purchased and possessed "an ownership interest, which the
5 contract in this case denotes as a 'unit.'" *Objection to the*
6 *Order of the Court*, Dkt. No. 449 at 4:18-21. Moore therefore
7 asserts that Florek's "ownership unit of the MPS limited liability
8 company represents an undivided claim in all assets of the
9 business and the right to a portion of the profits." Whether
10 Moore would have been entitled to an undivided claim in all assets
11 of MPS is immaterial. MPS is not the Debtor. And even if MPS
12 were the Debtor, Florek's ownership interest is still an equity
13 interest and not a debt. As such, the claim would be subject to
14 subordination under section 510(b). *In re Tristar Esperanza*
15 *Props., LLC*, 488 B.R. 394 (9th Cir. BAP 2013) (a claim arising
16 from an equity interest in a limited partnership is subordinated
17 to general unsecured creditors); *cf. In re Betacom of Phoenix,*
18 *Inc.* 240 F.3d 823 (9th Cir. 2007); *In re Del Biaggio*, 834 F.3d
19 1003, 1009 (9th Cir. 2016).

20 For the foregoing reasons, the court will overrule the
21 objection filed by Moore on May 2, 2017, and will deny any request
22 contained therein for reconsideration of the Order. The court is
23 concurrently entering an order denying the relief sought by Moore.

24 *** END OF MEMORANDUM DECISION ***
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Court Service List

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